

Message Text

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UNCLAS SECTION 1 OF 2 ALGIERS 0511

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FOLLOWING CONSTITUTES POST'S RESPONSES TO QUESTIONS
CONTAINED REFAIR. THEY ARE KEYED TO QUESTIONS AS
PRESENTED.

1. PRICE: ALTHOUGH FEW COST PLUS FEE CONTRACTS HAVE
BEEN SIGNED FOR MAJOR PROJECTS, NATIONAL COMPANIES
USUALLY DEMAND FIXED PRICE CONTRACTS. COST OF
EQUIPMENT AGREED UPON BY BOTH PARTIES. FOB AND CIF
COST ARE REIMBURSABLE. ONLY ESCALATION WE AWARE OF
TIED TO CHANGES IN ALGERIAN LEGISLATION AND LOCAL
COSTS. PROVISION FOR INFLATIONARY INCREASES IN
PROJECT COST NOT PROVIDED FOR, THOUGH INCREASE IN
LOCAL COSTS CAN BE USED AS BASIS FOR NEGOTIATING PROJECT
PRICE UPWARD. WE KNOW OF NO GUARANTEES ON PRICE OF
COMMODITIES. DEMURRAGE NOT USUALLY REIMBURSED. ON
SOME LARGE PROJECTS, CONTRACTORS HAVE GUARANTEED 2-YEAR
SUPPLY OF PARTS BEYOND PERIOD OF MANUFACTUREER'S GUARANTEE.
NO PARTS PRICE ESCALATION CLAUSE POSSIBLE , HOWEVER.
NO PRIVATE SECTOR ACTIVITY IN ALGERIA WORTH MENTIONING.

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2. BID AND PERFORMANCE BONDS: BID BONDS NOT USUALLY
REQUIRED. DEPENDING ON SIZE OF CONTRACT, PERFORMANCE
BONDS, IF REQUIRED, CAN BE OF TWO TYPES: ADVANCE CASH
GUARANTEE (PERHAPS 10-15 PERCENT OF CONTRACT) TO BE RESTITUTED
OVER LIFE OF CONTRACT, OR GUARANTEE OF SATISFACTORY
COMPLETION (SATISFIED WHEN AGREED UPON LEVEL OF PRODUCTION
REACHED). IT POSSIBLE TO NEGOTIATE AMOUNTS DOWNWARD.

DEFINITION OF WHAT CONSTITUTES FULFILLMENT OF "ACCEPTANCES" ARE NEGOTIABLE. PREVIOUS EXPERIENCE IN COUNTRY CAN MEAN WAIVER OF BOND. IMPORTED MACHINERY AND EQUIPMENT NOT USUALLY CONSIDERED AS OFFSET AGAINST BONDS, BECAUSE MACHINERY ALREADY OWNED BY NATIONAL AGENCY. CALL FOR UNCONDITIONAL BANK GUARANTEES CAN BE TIED TO ARBITRATION CLAUSE IN WHICH BANK CALLED ON TO HONOR JUDGEMENT OF ARBITER. (SEE ALSO PARA 16).

3. FORCE MAJEURE: DEFINITION MIGHT TYPICALLY INCLUDE WARS, NATURAL CATASTROPHIES AND OTHER DISRUPTING OCCURRENCES, INCLUDING NEW LEGISLATION FORECLOSING POSSIBILITY OF FURTHER WORK. THOUGH ONEROUS FACTORS NOT CONSIDERED FORCE MAJEURE, THEY SOMETIMES CAN BE ALLUDED TO IN ARGUING FOR MORE TIME. DEPENDING ON CIRCUMSTANCES, STRIKE COULD POSSIBLE BE CONSIDERED FORCE MAJEURE. STRIKES ARE RARE IN ALGERIA. PORT CONGESTION NOT USUALLY PART OF DEFINITION. FORCE MAJEURE CLAUSES ARE NEGOTIABLE. ONCE DEFINITION AGREED UPON, HOWEVER, IT CANNOT BE ALTERED. (SEE ALSO PARA 16).

4. TRAINING: USUALLY AN ESSENTIAL PART OF ANY MAJOR PROJECT IN ALGERIA. COST OF TRAINING NEGOTIABLE. FLAT FEE NORMALLY SETTLED UPON FOR COST PER PERSON. ANY EQUIPMENT BROUGHT INTO COUNTRY NORMALLY WILL STAY.

5. FOREIGN AND DOMESTIC WORKERS: MAINTENANCE OF BALANCE BETWEEN LOCAL AND EXPATRIATE LABOR NORMALLY PART OF CONTRACT. GOVERNMENT PUTS EMPHASIS ON PERFORMANCE; LABOR MIX UP TO CONTRACTOR. AT SAME TIME, FOREIGN UNCLASSIFIED

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COMPANIES WILL NEED TO CLEAR PLANS TO BRING IN EXPATRIATE PERSONNEL WITH NATIONAL LABOR UNION (UGTA). THIS CAN BE TORTUOUS PROCESS. THOUGH NATURE OF PROJECT WILL AFFECT RATIO, MOST AGREE CONSTRUCTION PROJECTS REQUIRE ON SKILLED EXPATRIATE FOR EVERY TEN LOCAL LABORERS. THIRD COUNTRY CIVIL WORKS LABOR USUALLY FRENCH, ITALIAN, SPANISH AND PORTUGUESS. HIGHLY SKILLED AND SKILLED LOCAL LABOR HARD TO FIND AND KEEP. UNSKILLED LABOR PLENTIFUL. WAGE RATE FOLLOWS: HIGHLY SKILLED WORKER, 6.05 ALGERIAN DINARS/HR.; SKILLED WORKER, 4.20 DA/HR.; SEMI-SKILLED WORKER, 3.50 DA/HR.; SPECIALIZED WORKER, 3.04 DA/HR.; LABORER, 2.40 DA/HR. DA 1.00 EQUALS \$.24 AT CURRENT RATE OF EXCHANGE. NONE OF FACILITIES MENTIONAED REPAIR COULD BE CONSIDERED ADEQUATE. RESPONSIBILITY FOR PROVIDING THEY UP TO CONTRACTOR. EMPLOYEES BROUGHT INTO ALGERIA SUBJECT TO LOCAL INCOME TAX. EFFECTS NOT SUBJECT TO IMPORT DUTIES PROVIDING LIST CERTIFIED BY AN ALGERIAN EMBASSY BEFOREHAND. IN PRINCIPLE, ALL FOREIGNERS WORKING IN ALGERIA MUST OBTAIN RESIDENT PERMIT. RESIDENTS

MUST OBTAIN EXIT VISA BEFORE LEAVING COUNTRY. APPLICATION FOR AND DELIVERY OF WORK PERMIT CAN SOMETIMES BE LENGTHY PROCESS. ALGERIAN WORK CODE (CODE DU TRAVAIL) REGULATES CONDITIONS UNDER WHICH WORKERS EMPLOYED. PAYMENT OF THIRD COUNTRY NATIONAL UP TO CONTRACTOR. THERE ARE FEW, IF ANY, PHILLIPPINO OR KOREAN WORKERS HERE. BECAUSE OF LACK OF DIPLOMATIC RELATIONS BETWEEN SOUTH KOREA AND ALGERIA, VISAS FOR KOREAN NATIONALS ARE DIFFICULT TO OBTAIN.

6. ARBITRATION: MODES OF ARBITRATION NORMALLY CONTAINED IN CONTRACT. THROUGH ARBITRATION IN THIRD COUNTRY POSSIBLE, ALGERIAN COMPANIES PREFER GOING BEFORE LOCAL BODY.

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7. LOCAL AGENTS AND REPRESENTATIVES: THE GOA HAS RECENTLY PUT INTO FORCE VERY STRIDENT RULES PROHIBITING USE OF INTERMEDIARIES OF ANY KIND. AS RESULT, CONTRACTS SIGNED WITH ANY STATE ORGANIZATION MUST BE ACCOMPANIED BY AFFIDAVIT ATTESTING TO NOT HAVING USED INTERMEDIARY

TO GAIN CONTRACT. ALGERIAN AUTHORITIES ASK THAT AFFIDAVIT BE SIGNED BEFORE OFFICER OF INDIVIDUAL'S EMBASSY IN ALGIERS.

8. LOCAL PARTNERSHIPS, CORPORATIONS: WHOLY-OWNED LOCAL CORPORATIONS NOT POSSIBLE. THERE ARE SOME JOINT-VENTURES INVOLVING AMERICAN FIRMS AND NATIONAL COMPANIES IN WHICH AMERICAN PARTNER IS 49 PERCENT SHAREHOLDER AND ALGERIAN COMPANY HOLDS 51 PERCENT.

9. GRADUATED OR ADVANCE PAYMENTS: THOUGH PERCENTAGE OF TOTAL CONTRACT PRICE PROVIDED FOR ADVANCE PAYMENT

NORMALLY TO BE NEGOTIATED, 15 PERCENT CONSIDERED MAXIMUM.
PERCENTAGE AND USE OF BANK GUARANTEES DEPEND ON SIZE
OF CONTRACT.

10. LOCAL SUPPLY: FOREIGN CONTRACTORS MUST NORMALLY
INCLUDE IN THERE BID COMMITMENT TO USE MAXIMUM LOCAL
CONTENT. THERE ROOM FOR NEGOTIATIONS, HOWEVER,
DEPENDING ON AVAILABILITY LOCAL MATERIALS.

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11. BONDED AREAS: CAN BE ARRANGED FOR. THEIR VALUE
IN HELPING TO ELIMATE DELAYS DUE TO CUSTOMS CLEARANCES
QUESTIONABLE, HOWEVER. GIVEN COST OF MAINTAINING GUARDS,
CUSTOMS EXCORT, INSPECTIORS, ETC., BONDED AREAS CAN BE
VERY EXPENSIVE.

12. LANGUAGE AND UNITS OF MEASUREMENT: LANGUAGE OF
BID MUST BE IN FRENCH. UNITS OF MEASUREMENT MUST BE
METRIC.

13. CORPORATE TAXES: WE REFER USDOC TO CHAPTER ON
TAXATION CONTAINED IN "MARKETING IN ALGERIA", A GENERALLY
ACCURATE GUIDE ON SUCH MATTERS.

14. MACHINERY AND EQUIPMENT: CUSTOMS DUTIES MUST BE
PAID ON MACHINERY IMPORTED FOR A PROJECT. RE-EXPORT OF
SUCH MACHINERY NOT POSSIBLE. SPARE PARTS FOR HEAVY
EQUIPMENT WILL BE REQUIRED, BUT QUANTITY AND PERIOD OF
TIME ARE NEGOTIABLE.

15. NEGOTIABLE CONTRACT CLAUSES: BEYOND ITEMS IDENTIFIED
IN FOREGOING, IT NOT POSSIBLE TO SAY WITH PRECISION WHAT
IS AND IS NOT NEGOTIABLE. OBVIOUS FACTORS SUCH AS SIZE
OF CONTRACT, DEGREE TO WHICH GOVERNMENT MINISTRY OR
ORGANIZATION WANTS PROJECT, AND EXTENT TO WHICH EXISTING
LEGISLATION DEFINES ALTERNATIVE WILL DETERMINE WHETHER
OR NOT NEGOTIATION POSSIBLE.

16. PARA 2 AND 3 ABOVE REFER TO TWO SPECIFIC AREAS
OF PERFORMANCE REQUIREMENTS: PERFORMANCE BONDS AND
FORCE MAJEURE. IT SHOULD BE IMPHSIZED, HOWEVER, THAT
ALGERIAN CONTRACTS TYPICALLY HAVE MANY OTHER PERFORMANCE
REQUIREMENTS, INTERIOR DEADLINE DATES, AND OTHER OBLIGATIONS,
MANY WITH PENALTIES, AND ALL APPLYING EFFECTIVELY ONLY
TO FOREIGN CONTRACTING PARY. WHILE CONTRACTS ALSO
WILL STATE OBLIGATIONS OF ALGERIAN CONTRACTING PARTY,
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THERE NO ENFORCEMENT CLAUSE, AND FAILURE OF ALGERIAN PARTY TO MEET OBLIGATIONS LEGALLY DOES NOT MITIGATE FOREIGN CONTRACTING PARTY'S OBLIGATIONS. THUS, IF FOREIGN FIRM AGREES TO ERECT STRUCTURE WITHIN GIVEN TIME, SUBJECT TO PENALTY, AND ALGERIAN PARTY AGREES TO PROVIDE NECESSARY CEMENT, PENALTY IS RPT IS IMPOSED IF STRUCTURE NOT ERECTED ON TIME EVEN THOUGH CAUSE WAS LACK OF ADEQUATE AND TIMELY DELIVERIES OF CEMENT. THIS IS PROBLEM THAT CAN BE MET HEAD ON DURING CONTRACT NEGOTIATIONS OF FOREIGN FIRMS IS ASTUTE AND KNOWLEDGEABLE ENOUGH TO BRING IT UP. IT SHOULD BE REMEMBERED THAT ALGERIAN CONTRACTING PARTY OFTEN HAS LITTLE OR NO CONTROL OVER PERFORMANCE OF OTHER ALGERIAN ORGANIZATIONS; HOWEVER, AFTER STRENUOUS NEGOTIATIONS, ALGERIAN ORGANIZATIONS WILL AGREE TO CLAUSES GRANTING SOME PROTECTION IN EVENT OF FAILURE ON ALGERIAN SIDE TO LIVE UP TO OBLIGATIONS.

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